

**BADIAK & WILL, LLP**  
Attorneys for Plaintiff  
106 Third Street  
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(516) 877-2225  
Our Ref.: 07-J-011-AW

Office  
Copy

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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LIBERTY MUTUAL GROUP INC.,  
as subrogee of BODGER SEEDS, LTD.,

08CV 00223 (JSR)

Plaintiff,

-against-

COMPLAINT

MEDITERRANEAN SHIPPING COMPANY S.A.,

Defendant.

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Plaintiff LIBERTY MUTUAL GROUP INC., as subrogee of BODGER SEEDS, LTD., complaining of the defendant, MEDITERRANEAN SHIPPING COMPANY S.A., by its attorneys BADIAK & WILL, LLP, sets forth and alleges to this Court upon information and belief, as follows:

1. This is an admiralty action within the meaning of section 9 (h) of the Federal Rules of Civil Procedure.
2. At and during all material times hereinafter referred to, plaintiff LIBERTY MUTUAL GROUP INC. ("Liberty Mutual") was and still is a business corporation duly organized and existing under and by virtue of the laws of Massachusetts, with an office and place of business located at 175 Berkeley Street, Boston, Massachusetts, 021174.

3. At and during all material times hereinafter referred to, defendant MEDITERRANEAN SHIPPING COMPANY S.A. ("MSC") was and still is a corporation duly organized and existing under and by virtue of the laws of a foreign state, with an office and place of business located c/o Mediterranean Shipping Company (USA) Inc., 420 Fifth Avenue, New York, New York, 10018-2702, and was engaged as a common carrier by water for hire and owned, chartered, managed and/or otherwise controlled or contracted to use the merchant vessels ROYAL ZANZIBAR and MSC ILONA, as vessels engaged in the common carriage of merchandise by water for hire between, among others, the ports of Tanga, Tanzania and Long Beach, California.

4. Liberty Mutual, through its division Liberty International Underwriters, was the insurer of a cargo of flower seeds under policy number NYOMC01182001, damage and loss to which is the underlying origin of this action. Liberty Mutual was obligated under its policies of insurance to pay, and did pay its assured, for damage and loss sustained by said cargo while in transit, and would be or otherwise became subrogated to the rights of its assured, against third-parties, including the defendant, for the damage and loss sustained, and it is entitled to maintain this action, and brings this action on its own behalf and on behalf of all parties who may be so entitled.

5. On or about January 26, 2007, there was shipped by Maua Arusha, Ltd., in Arusha, Tanzania, as shipper, and delivered to MSC and the ROYAL ZANZIBAR, at Tanga, Tanzania, one 20-foot container designated MSCU1550902, containing six hundred forty-eight (648) bags of flower seeds, then being in good order and condition, and defendant then and there accepted the said shipment so shipped and delivered to them and, in consideration of certain freight charges thereupon paid or agreed to be paid, agreed to transport and carry

the said shipment to Long Beach, California, and there deliver the same in like good order and condition as when shipped, delivered to and received by them, to Environmental Seed Producers, the consignee, all in accordance with a bill of lading issued by or on behalf of the aforementioned vessel and defendant MSC, number MSCUTA011430, dated 1/26/07 (attached as **Exhibit 1**).

6. Prior to its arrival at Long Beach, and while still in the care, custody and control of MSC, the shipment was transloaded on board the MSC ILONA, in accordance with a bill of lading issued by or on behalf of the aforementioned vessel and defendant MSC, number MSCUTA011091 (attached as **Exhibit 2**).

7. Thereafter, defendant made delivery of the aforementioned shipment at Long Beach on or about April 4, 2007, but not in like good order and condition as when shipped, delivered to and received by them, but, to the contrary, with damage, loss and impaired value thereto, all in violation of defendant's obligations and duties as a common carrier of merchandise by water for hire.

8. No acts or negligence on the part of the plaintiff's insured contributed to the damage and loss herein described.

9. All conditions precedent required of the plaintiff and its predecessors-in-interest in said shipment have been performed.

10. By reason of the foregoing premises, plaintiff has sustained damages in the amount of \$69,825.75, no part of which has been paid although duly demanded of defendant.

**WHEREFORE**, plaintiff prays:

1. That due process of law may issue against defendant according to the practice of this Court;

2. That if defendant cannot be found within this District, then all of its property within this District be attached in the sum of \$69,825.75, with interest thereon and costs;

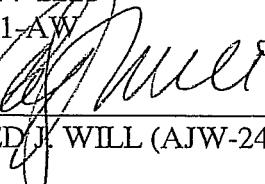
3. That judgment may be entered in favor of plaintiff and against defendant for the amount of \$69,825.75, together with pre-judgment interest, costs and such other relief as the Court deems equitable, just and proper.

Dated: Mineola, New York  
January 2, 2008

Respectfully submitted,

BADIAK & WILL, LLP  
Attorneys for Plaintiff  
106 Third Street  
Mineola, New York 11501  
(516) 877-2225  
07-J-011-AW

By:

  
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ALFRED J. WILL (AJW-2485)

**EXHIBIT 1**



MEDITERRANEAN SHIPPING COMPANY S.A., Geneva

ORIGINAL BILL OF LADING  
MSCUTA011430

IS IT PORT-TO-PORT SHIPMENT ? (Fill-in Boxes 7 & 8) Tick -> <input checked="" type="checkbox"/>		COMBINED-TRANSPORT SHIPMENT ? (Fill-in Boxes 5, 6, 9 & 10) Tick -> <input type="checkbox"/>		Nº of original B/L (number & words)	Nº of B/L Rider Pages (number & words)	
				3/THREE	NIL	
(1) SHIPPER: (Full details)						
MAUA ARUSHA LTD P.O.BOX 15002, TEL:(00 255) (0) 754 273569 ARUSHA, TANZANIA						
(3) NOTIFY: (No responsibility shall attach to Carrier or to his Agent for failure to notify)						
EXPEDITOR INTERNATIONAL KEN SAUW W. CENTRURY BLVD 6TH FLOOR LOS ANGELS CA U.S.A. 92001, 90043						
(5) PRE-CARRIED BY: (Combined Transport only) XXXXXXXXXXXXXXXXXXXXXX		(6) PLACE OF RECEIPT: (Combined Transport only) XXXXXXXXXXXXXXXXXXXXXX		(4) SPACE FOR CARRIER'S AGENTS ENDORSEMENTS: (FCL/FCL, SLSC)		
(7) PORT OF LOADING: TANGA		(8) PORT OF DISCHARGE: LONG BEACH		FCL/FCL LINER IN FREE OUT		
(9) PLACE OF DELIVERY: (Comb. Trans. only) XXXXXXXXXXXXXXXXXXXXXX		(10) MODE OF ON-CARRIAGE: (Comb. Trans. only) XXXXXXXXXXXXXXXXXXXXXX				
(11) VESSEL & VOY. N° ROYAL ZANZIBAR 56R		(12) AGENTS AT PORT OF DISCHARGE / DELIVERY:				
(14) CARRIER'S RECEIPT (Continued on attached Bill of Lading Rider page(s), if applicable)						
(13) All details shown in Box 13 are furnished by the Shippers, being their Memoranda. Quantity, Condition, Contents and all other information shown in Box 13 are unknown to the Carrier, who has no means to verify their correctness and does not acknowledge them. The statements of the Shippers in Box 13 do not engage the Carrier contractually or in any other manner.						
Identity Marks of Cont. or other packages and seal number(s)	Corresp. number of cont. or other package	Total nbr of cont or other packages received by the carrier	Haz. Code	Cargo Description (Continued on attached Bill of Lading Rider page(s), if applicable)	Cargo Gross weight	Measurement
MSCU1550902/ 20'DV/ TARE Seal:1760518/Carriers seal	2200 KG	1		1x 20' C/N/R(S) S.T.C. 648 BAGS OF FLOWER SEEDS 648 BAGS	15969.000 KG	
TOTAL: 15969.000 KG						

(15) FREIGHT &amp; CHARGES (=PAYABLE= signifies INTENTION: Cargo shall not be delivered unless Freight &amp; Charges are paid)

Specification of Freight & Charges:	Board	Rate	POL	POD	PAYABLE at ELSEWHERE
<b>FREIGHT PAYABLE AT DESTINATION</b>					
Ad Valorem charges					
Declared value:					
IN ACCEPTING this Bill of Lading, the shipper expressly agrees to be bound by all the terms, conditions, stipulations and disclaimers, whether printed elsewhere or written herein and in Page 1, and in particular agrees that the Carrier shall have the right, at his sole discretion, to accept or reject any bill of lading, which is not in accordance with the terms, conditions, stipulations and rules of shipping, and which is deemed contrary to current shipping practice.					
IN PARTICULAR, the Carrier is entitled to reject any bill of lading, which is not in accordance with the terms, conditions, stipulations and rules of shipping, and which is deemed contrary to current shipping practice.					
IN ADDITION to the terms of this Bill of Lading, the following stamp at the top right corner of this contract have been agreed, it is a supplement to the original Bill of Lading and is to be considered part and parcel of the original Bill of Lading.					
TOTAL FREIGHT & CHARGES					
PLACE AND DATE OF ISSUE TANGA	SHIPPED ON BOARD DATE	26 JAN 2007		SIGNED ON BEHALF OF THE MAESTRO MSC AGENT	

**EXHIBIT 2**



MEDITERRANEAN SHIPPING COMPANY (USA) Inc.

ARRIVAL NOTICE

MEDITERRANEAN SHIPPING COMPANY (USA) INC  
10050 NORTHWEST FREEWAY, SUITE 300  
Houston, Texas 77092

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